

Court Refuses U.S. Security Wiretap Case

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The Supreme Court yesterday refused to consider whether government agents must obtain court warrants before conducting "foreign intelligence" wiretaps.

Its refusal to hear the case came despite the Justice Department's willingness to have a showdown on the issue.

The justices let stand a Third U.S. Circuit Court of Appeals decision that American Presidents can authorize such electronic surveillance in the interests of national security.

Three justices William O. Douglas, William J. Brennan Jr. and Potter Stewart, voted to take on the question during the term that has just begun, but at least four justices must agree before the high court grants review of a case.

A fourth vote might have come from Thurgood Marshall, but Marshall, a former U.S. solicitor general who handled wiretapping matters extensively from 1965 to 1967, disqualified himself.

The action let stand the conviction of Soviet spy Igor A. Ivanov for conspiring with an American technician to steal defense secrets. Ivanov, who was a chauffeur for the Soviet trading agency Amtorg when arrested in 1963, is under a 20-year sentence.

Refusal to review a lower court ruling does not signify Supreme Court approval or disapproval of the wiretapping. But the effect of yesterday's action will be to permit federal agents to continue the practice.

Debate is under way in Congress and within a congressional created Federal Wiretap Commission over the need for a new law requiring warrants for intelligence taps and establishing rules for obtaining them.

Attorney General William B. Saxbe and FBI Director Clarence M. Kelley have opposed warrant legislation, saying that gathering foreign intelligence, unlike gathering

evidence for use in criminal trials, does not lend itself to judicial control.

Ivanov's attorneys, Robert L. Weinberg and Edward Bennett Williams, said the warrantless wiretaps that led to Ivanov's arrest and conviction were conducted in violation of the Fourth Amendment's ban on unreasonable searches and seizures.

That issue was specifically left open two years ago when the court voted 8 to 0 to reject the Nixon administration's claim of similar rights to unsupervised surveillance of domestic radicals.

The 1968 federal wiretap law authorizes court-approved tapping and bugging for specific crimes, but it leaves to the courts the decision whether the executive branch has the constitutional power to decide alone whether to tap in national security cases.

U.S. Presidents at least since Franklin D. Roosevelt have asserted the power to tap without court permission, but that authority has been questioned increasingly during the past 10 years as the high court held electronic eavesdropping subject to the restrictions of the Constitution.

The specific issue in the Ivanov case was whether the fruits of eavesdropping could be used against him in a prosecution for espionage. It was conceded that the wiretaps were crucial in the FBI investigation that led to catching Ivanov at a New Jersey railroad station trying to pick up Air Force secrets from American technician John A. Butenko.

Belated discovery of the wiretap prompted the justices in 1969 to send the case down for a District Court hearing on whether the case had been tainted by illegal government conduct. The conviction was reaffirmed, and a sharply divided court of appeals refused to disturb it.

The 5-to-4 majority ruled that the judiciary could review the wiretap question even in the foreign intelligence field, but added that the wiretap evidence could be used if the surveillance were found to be reasonably related to the exercise of presidential power in the field of international affairs.

Dissenters said the judges were approving an "awesome executive prerogative" that could be used to justify burglary and other illegal tricks in the name of security.